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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TODD A. NEWVILLE

Appeal 2009-004862
Application 09/843,536
Technology Center 2600

Decided: September 16, 2009

Before KENNETH W. HAIRSTON, ROBERT E. NAPPI,
and CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

WHITEHEAD, JR., *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 2, and 6-20. *See* App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm-in-part.

STATEMENT OF THE CASE

Appellant invented a high speed wireless communications system wherein information is communicated to a mobile processing system in an information portal and select location.¹

Claim 1, which further illustrates the invention, follows:

1. A communication system comprising:
 - a stationary transceiver defining an information portal in a vicinity thereof; and
 - a local server in communication with said transceiver, said local server being configured
 - to respond to entry of a mobile processing-system present within said information portal, and
 - to provide, to said mobile processing system, data previously requested for said mobile processing system prior to entry of said mobile processing system into said information portal.

The Rejections

The Examiner relies upon the following prior art reference as evidence of unpatentability:

Lumme	US 5,554,832	Sep. 10, 1996
Calvert	US 6,526,275 B1	Feb. 25, 2003
		(filed Apr. 24, 2000)
Richton	US 6,650,902 B1	Nov. 18, 2003
		(filed Nov. 15, 1999)
Ritter	US 6,657,538 B1	Dec. 2, 2003
		(filed Nov. 7, 1997)

¹ *See generally* Spec. 1-3.

Needham

US 7,174,173 B1

Feb. 6, 2007
(filed Feb. 2, 1999)

Claims 1, 7, 9, and 11-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Calvert and Richton (Ans. 3-6).

Claims 8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Calvert, Richton, and Needham (Ans. 7).

Claims 2 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Calvert, Ritter, and Lumme (Ans. 8-9).

Rather than repeat the arguments of Appellant or the Examiner, we refer to the Brief and the Answer for their respective details. In this decision, we have considered only those arguments actually made by Appellant. Arguments which Appellant could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008).

Appellant argues that by modifying Calvert by incorporating a delay in the deliverance of information, Calvert's proposed user would be frustrated with receiving potentially obsolete information, thereby defeating the purpose of Calvert's invention. *See* App. Br. 6-8. It is the Examiner's position that Calvert was only cited to establish evidence of a stationary transceiver defining an information portal (Ans. 10).

ISSUE

Has Appellant shown that the Examiner erred in finding that the combination of Calvert and Richton discloses a communication system wherein upon entering an information portal, previously requested data is provided to a mobile processing-system?

FINDINGS OF FACT

1. Figure 1 of Calvert is reproduced below:

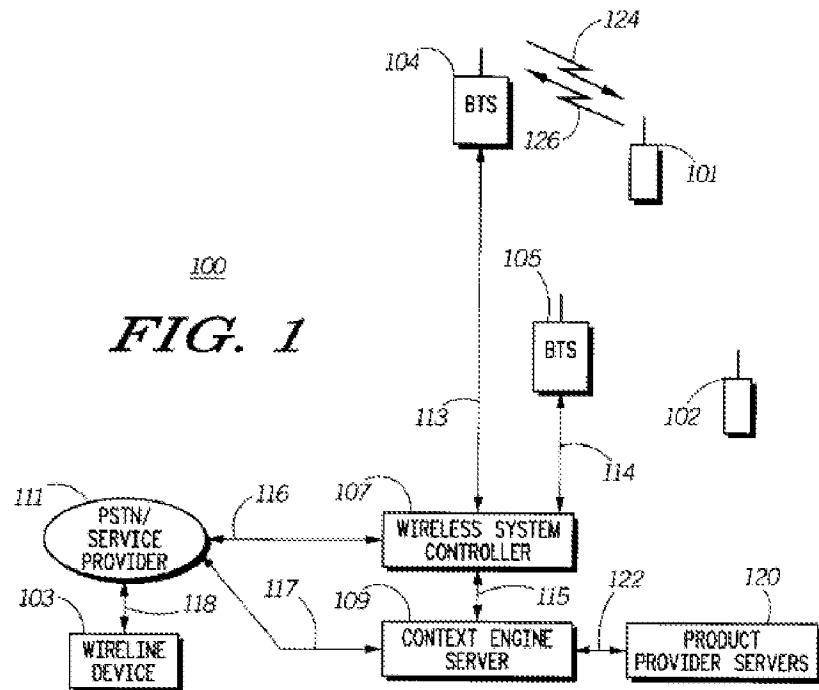


Figure 1 shows a block diagram of the communication system wherein a user is informed of a product's availability within geographical vicinity.

2. Figure 1 of Needham is reproduced below:

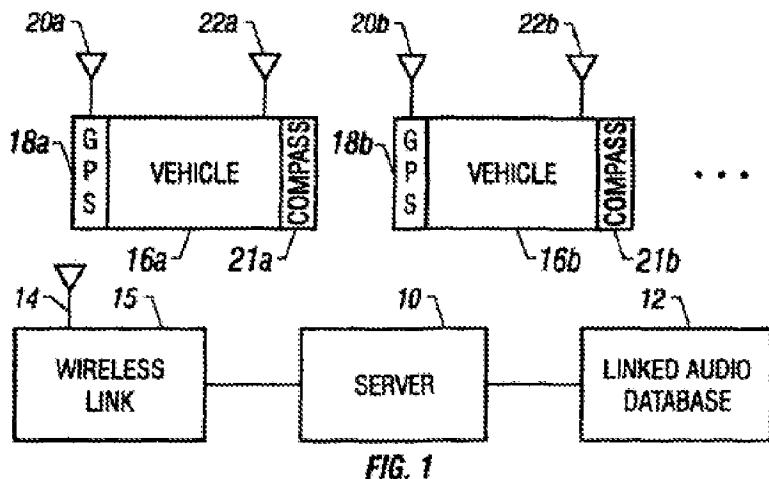


Figure 1 shows a block diagram for a system for providing information to multiple vehicle operators wherein the wireless link 15 may be a telephone base station coupled to the server 10 over a network.

PRINCIPLES OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998))).

[T]he court erred in concluding that a patent claim cannot be proved obvious merely by showing that the combination of elements was obvious to try. When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 402-03 (2007).

"[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

ANALYSIS

Claims 1, 7, 9, and 11-20²

Appellant argues that the Examiner erroneously suggests that one of ordinary skill in the art would have found it obvious to introduce delay into Calvert's system (App. Br. 7). Appellant further argues that the delay would frustrate the user of Calvert's system and render the Calvert system unsuitable for its intended purpose (App. Br. 8).

Once the Examiner has satisfied the burden of presenting a *prima facie* case of obviousness, the burden then shifts to Appellant to present evidence and/or arguments that persuasively rebut the Examiner's *prima facie* case. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). The Examiner indicates that he only relies upon Calvert to establish evidence that a stationary transceiver defining an information portal wherein a user may request and obtain information from a local server is well known in the art (Ans. 10; *see also* FF 1). The Examiner relies upon Richton to disclose a location-based delivery system with stored information in association with a wireless mobile unit (Ans. 10-11).

Although the Examiner relied upon the combined teachings of Calvert and Richton, Appellant failed to address the errors of the obviousness rejection based upon the combination of the references with any specificity. Appellant provides a synopsis of the Richton reference on page 6 of the Appeal Brief, but does not argue Richton in combination with Calvert.

² Appellant argues claims 1, 19, and 20; claim 14; claim 16; claim 17; and claim 18 individually; however, because Appellant's treatment of the Richton reference is germane to all of the rejections, we are grouping the claims as they were all rejected under 35 U.S.C. § 103(a) over Calvert and Richton.

Further, Appellant argues that instituting a delay within Calvert's system would be contradictory to the original intent of Calvert, but fails to address the delay's origin. *See* App. Br. 6-8. Richton discloses that information relating to location of a wireless mobile unit is periodically or continually sent to the wireless mobile unit (col. 2, ll. 55-58). In light of this disclosure, we fail to see how the teachings of Richton introduce a delay that would be detrimental to the operation of Calvert. Further, Richton relies upon an intelligent personal assistant (IPA) to specify predetermined data previously requested once the user of the mobile unit is within the location of the server (col. 3, ll. 29-38). Appellant does not address the Examiner's reliance upon Richton's IPA. Appellant fails to address the combination of Calvert and Richton in view of any of the claims 1, 7, 9, and 11-20. Such conclusory assertions without supporting explanation or analysis particularly pointing out errors in the Examiner's reasoning fall well short of persuasively rebutting the Examiner's *prima facie* case of obviousness. *See Oetiker*, 977 F.2d at 1445. We therefore sustain the Examiner's rejection of claims 1, 7, 9, and 11-20.

*Claim 8*³

ISSUE

Has Appellant shown that the Examiner erred in finding that the combination of Calvert, Richton, and Needham discloses a stationary transceiver disposed at a location selected from the group consisting of an elevator, a building lobby and a vehicle?

³ As argued by Appellant (App. Br. 12-15).

ANALYSIS

Appellant argues that Needham does not suggest that a two-way radio associated with the antenna 22a on vehicle 16a is anything other than a two way radio that communicates with the wireless link 15 (App. Br. 13). The Examiner argues that a routineer in the mobile communications art would have recognized that the placement of base (stationary) transceivers is dependent upon the need for coverage within a given area (Ans. 14; *see also* FF 2). The Examiner fails to provide convincing support for his position. Initially in the rejection, the Examiner indicated that support for his position could be located in Needham (col. 1, l. 63 – col. 2, l. 5; Ans. 7). However, Needham does not address the location of base (stationary) transceivers in a vehicle. We find Appellant’s arguments persuasive and we will not sustain the Examiner’s obviousness rejection of claim 8.

Claim 10

ISSUE

Has Appellant shown that the Examiner erred in finding that the combination of Calvert, Richton, and Needham discloses a local server in wireless communication across a local area network with a stationary transceiver?

ANALYSIS

Appellant does not separately argue with particularity the limitations of claim 10 (App. Br. 6-18). Such conclusory assertions without supporting explanation or analysis particularly pointing out errors in the Examiner’s reasoning fall well short of persuasively rebutting the Examiner’s *prima facie*

case of obviousness. *See Oetiker*, 977 F.2d at 1445. We therefore sustain the Examiner's rejection of claim 10 for the reasons indicated previously.

*Claim 2*⁴

Appellant argues that Ritter does not allow access to a building on the basis of the identity of the mobile processing system (App. Br. 15). It is the Examiner's position that Ritter discloses evidence of a similar mobile communications system in which the user provides specific identification information to the communication terminal for authentication (Ans. 15).

ISSUE

Has Appellant shown that the Examiner erred in finding that the combination of Calvert, Ritter, and Lumme discloses a communication system wherein access to a building is granted after authentication of a mobile processing-system within an information portal?

FINDING OF FACT

3. Figure 1 of Ritter is reproduced below:

⁴ As argued by Appellant (App. Br. 15-18).

FIG. 1

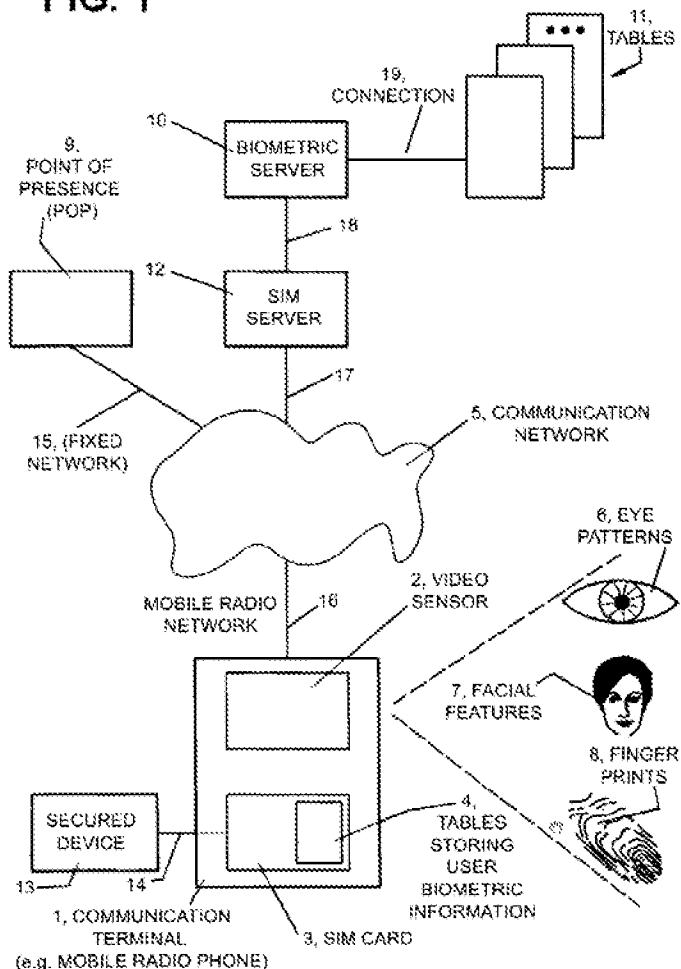


Figure 1 discloses a block diagram having a communication network and a mobile communication terminal device connected to it. The mobile communication terminal device has a SIM-card and a video sensor. A biometric server, SIM-server, a point of presence, and a secured device are also connected to the communication network.

ANALYSIS

The Examiner reasons that Ritter was cited to provide evidence that a mobile communications system similar to Calvert discloses using specific identification information to the communications terminal for authentication (Ans. 15). The Examiner further reasons that Ritter discloses transmitting authentication information in a *wireless manner* by the mobile

communications terminal to an external secured device (Ans. 15). Appellant argues that Ritter teaches permitting building access based upon the identity of the person and not the identity of the mobile processing system, as stated in claim 2 (App. Br. 15). It is the Examiner's position that when the user's authentication information is transmitted, the mobile communications terminal inherently transmits its identification in combination with the authentication information of the user (Ans. 15). Appellant further contends that Calvert is silent in regards to building access and Ritter's disclosure does not address the deficiency of Calvert in this regard. *See* App. Br. 15-16. We find Appellant's arguments to be persuasive.

The Examiner's motivation to combine the references is flawed. Ritter is concerned with providing access to a building by authenticating the user by biometric means (FF 3). The Examiner's reliance upon an alleged inherent feature of Ritter is not support by the reference. Lumme discloses a remote controller used in an elevator system and also fails to address the deficiencies of Calvert. Therefore, we will not sustain the Examiner's obviousness rejection of claim 2. We will also not sustain the Examiner's rejection of claim 6 because it is dependent upon independent claim 2.

CONCLUSIONS

1. Appellant has not shown that the Examiner erred in finding that the combination of Calvert and Richton discloses a communication system wherein upon entering an information portal; previously requested data is provided to a mobile processing-system.
2. Appellant has shown that the Examiner erred in finding that the combination of Calvert, Richton, and Needham discloses a stationary

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transceiver disposed at a location selected from the group consisting of an elevator, a building lobby and a vehicle.

3. Appellant has not shown that the Examiner erred in finding that the combination of Calvert, Richton, and Needham discloses a local server in wireless communication across a local area network with a stationary transceiver.

4. Appellant has shown that the Examiner erred in finding that the combination of Calvert, Ritter, and Lumme discloses a communication system wherein access to a building is granted after authentication of a mobile processing-system within an information portal.

ORDER

We will sustain the Examiner's decision rejecting claims 1, 7, and 9-20.

We will not sustain the Examiner's decision rejecting claims 2, 6, and 8.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

babc

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